



## COMMUNITY DEVELOPMENT DEPARTMENT

17575 Peak Avenue Morgan Hill CA 95037 (408) 778-6480 Fax (408) 779-7236  
Website Address: [www.morgan-hill.ca.gov](http://www.morgan-hill.ca.gov)

### PLANNING COMMISSION MEETING MINUTES

#### REGULAR MEETING

OCTOBER 11, 2011

PRESENT: Moniz, Mueller, Tanda, Koepp-Baker, Dommer, McKay

ABSENT: Benich

LATE: None

STAFF: Assistant City Manager (ACM) Little, City Attorney (CA) Wan,  
Interim Community & Economic Development Administrator (ICEDA)  
Rowe, Senior Planner (SP) Linder, and Development Services  
Technician (DST) Bassett

Chair Moniz called the meeting to order at 7:00 p.m., inviting all present to join in reciting the pledge of allegiance to the U.S. flag.

#### **DECLARATION OF POSTING OF AGENDA**

Development Services Technician Bassett certified that the meeting's agenda was duly noticed and posted in accordance with Government Code Section 54954.2.

#### **OPPORTUNITY FOR PUBLIC COMMENT**

Chair Moniz opened, and then closed, the floor to public comment for matters not appearing on the agenda as none were in attendance indicating a wish to address such matters.

#### **ORDERS OF THE DAY**

No changes.

#### **MINUTES:**

September 13, 2011 **COMMISSIONERS MUELLER AND MCKAY MOTIONED TO APPROVE THE SEPTEMBER 13, 2011 MINUTES WITH THE FOLLOWING REVISIONS:**

Page 13, paragraph 1: There's still going to be commercial traffic, garbage and delivery trucks, etc. Walnut Grove drive has been very contentious for commercial

# PLANNING COMMISSION MEETING MINUTES

OCTOBER 11, 2011

PAGE 2

~~litigation~~ **projects** from the beginning.

Page 15, paragraph 1: We ought to look at how we can support the sports complex. But this doesn't meet the biggest demand we have in Morgan Hill which is for a ~~major~~ **market rate** apartment complex.

Page 18, paragraph 6: We're not ever going to have enough Morgan Hill residents **downtown** to support all the retail we're planning to put in place.

**THE MOTION PASSED (6-0-0-1) WITH THE FOLLOWING VOTE: AYES: UNANIMOUS; NOES: NONE; ABSTAIN: NONE; ABSENT: BENICH**

## OTHER BUSINESS:

### 1) BMR REDUCTION PROGRAM LANGUAGE

Linder presented her staff report.

Moniz opened the floor to public comment.

Dick Oliver of Dividend Homes appeared. I made the suggestion that the fee be paid at each building permit, or continued down throughout the phase. But I still have some problems. I don't understand why a builder would have to build two BMRs after paying the in-lieu fee. I don't think that any of us should owe \$150,000 and still have to build the BMRs.

Linder: In the new proposal we drop off the requirement to build the BMR if you reach 50 percent. We do collect the fee up front, so if you only build one, you would owe \$142,500. But you don't have to build the BMR. That column drops off in this scenario. But if you do progress and you get to 50 percent before June of 2014, then we have to refund you the difference.

Oliver: If you pay the fee at the occupancy of the fifth unit, then you stop building and you lose your allocations, then you don't have to come back and build the BMR units?

Linder: That's correct.

Mueller: We're taking the risk that says we think you're going to build your units. If you don't build very many units, we're going to lose more BMRs. The problem we ran into is that if you build  $\frac{3}{4}$  of the units, the BMR sites are probably gone. Then we'd have to ask you to sell a large home as a BMR, and that's not going to work.

Dividend: Okay, that clarifies the issue. I have two more comments regarding the legal language: I would like a sentence added that if you have pre-existing claims, they would not be covered by the waiver. I also need to know about phasing. We're only getting financing from the bank for ten units at a time. At Alicante I have six units and 12 units. I have combined them and would do nine units at a time. Would it be 50% of 18 units? Or would it be 9 units + 9 units, so 50% would be 5 units each? It's a minor administrative detail where we would like clarification

## PLANNING COMMISSION MEETING MINUTES

OCTOBER 11, 2011

PAGE 3

from staff.

Michael Cady of UCP appeared: When we originally started this whole process, I thought we would pay \$75,000 for each BMR unit at the beginning of the phase, and then we would be all done. Now I hear that I have to pay the whole \$150,000 up front and then I get reimbursed for the difference. I appreciate that, but that's a fundamental difference with what we thought the program was going to be. I would like to see the program go back to being an incentive and being simple.

Moniz closed to floor to public comment.

McKay: I'm hearing less negative feedback but I think we should let the development community get one last round of comments.

Tanda: It still isn't clear to me how this system works. How is this different than what we had before?

Linder: Previously, it was an incremental reduction program. What Council passed was an extension of that program that now allows for a buyout, so the buyout provision is new. What wasn't answered in Resolution 6450 was when that buyout is triggered.

Tanda: I thought there was a buyout program with \$150,000 per unit.

Linder: That was an in-lieu fee that was previously only used for small projects—not for large projects. It was not a buyout provision.

Tanda: When did we collect that fee?

Linder: It was collected up front.

Tanda: My impression was that City Council had extended an in-lieu fee to the large projects and that it was going to be \$75,000 per BMR as an incentive to build. I heard three different times for collection. One would be the entire fee at the first building permit, another would be prorated at each permit issuance and the third way would be to collect at Certificate of Occupancy. I thought the development community preferred the entire fee to be collected at the building permit so it would be clear to their financier. The incentive would be that the reduced in-lieu fee goes away after a certain number of units are completed. If you weren't able to do that, then you would pay the whole in-lieu fee and lose it if you didn't build. That would be a simple way to do it because then no table would be necessary to calculate. I thought we had reached consensus on that last time. I think the RDCS program is very complicated and I think we should simplify it as much as possible.

Mueller: I think what we have now works. It creates a little more incentive in my mind, because it makes developers want to get through at least 50 percent. Otherwise, it's very easy to get the allotments back later and never build the BMR. The risk is that if they don't build, we lose BMRs. To Mr. Cady's question, we have dropped the requirement to build a BMR if you don't finish a phase, so that should work for the development community. But I also think we need to add the

## PLANNING COMMISSION MEETING MINUTES

OCTOBER 11, 2011

PAGE 4

indemnity language requested by Mr. Oliver.

Wan: I think that language to preclude existing claims from the date the ordinance is passed is reasonable.

Koepp-Baker: I think this is a lot more reasonable and equitable. And since attorney Wan has agreed to add the exclusion sentence, this is a go for me.

Mueller: We might need to add something that says if they don't pull any permit for a phase, they don't owe any money because the "0 line" is misleading. I think we might need a clarification about allocation year phase versus financeable phase, as Dick Oliver suggested. I think this is all written around allocation year. I don't know how to address that.

Linder: For the purposes of this application it would be based on the fiscal year allocation phase. If a developer wants to split an 18-unit allocation year into a nine and nine, we can work with him as far as the logical progression of construction.

Mueller: There's no motion, just a consensus, right?

Linder: Correct.

Moniz called for a break at 8:00 p.m. and reconvened at 8:07.

### **2) SCHEDULE FOR REVIEW OF PROJECT APPLICATIONS FOR THE UPCOMING RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) COMPETITIONS:**

Rowe presented his staff report.

Dommer: How comprehensive are the applications?

Rowe: They are fairly detailed. You will be receiving the packets on November 22<sup>nd</sup>. The will include a project narrative, site plans, representative elevations, their own scoring, and staff's recommended scoring. You will then give direction to us and we'll provide you with a response spreadsheet. You will be able to see the way the scoring evolves over the course of the meetings.

Tanda: I see on Item 8 that the Council voted not to approve the General Plan amendment. What is the way the City would normally approve General Plan amendments?

Rowe: There are updates to the General Plan that take place on a cyclical basis, and there are also applicant requested changes that can occur. The updated General Plan will take place later this year and that is usually a multi-year endeavor.

Tanda: Do we bundle up General Plan requests from applicants?

Rowe: There is a Council adopted policy that limits the number of occasions each calendar year and also the Government Code places limits on the number of occasions a city can update elements. There is a policy on when those applications can be filed. Typically, they are bundled, which the case is going forward.

## PLANNING COMMISSION MEETING MINUTES

OCTOBER 11, 2011

PAGE 5

Tanda: So even though an applicant might receive a denial, they could apply again in the future?

Rowe: Yes, there can be reconsideration and it can be done as part of the comprehensive update of the General Plan.

Tanda: Getting back to the RDCS, is there going to be an update of the number of allocations that can be awarded that would be reflective of the current housing plan?

Rowe: The current plan runs through 2014. Based on that, we will exceed the Regional Housing Need Allocations (RHNA) numbers. There will be new RHNA numbers in the spring. That will trigger the need for another cycle of updates to our housing element. That will be for an eight-year period beyond 2014.

Tanda: So next year when we do the RDCS, we will be looking at the updated figures?

Rowe: Yes, because this year's competition runs through 2014.

Tanda: Since I've been on the Commission, it seems we've been in a recession. Since that time, it appears we are awarding allocations to projects that are just loading up their queue and don't have any starts this year.

Rowe: Those projects that are competing this year that already have allocations don't just want 15 ongoing allotments. This means that they're trying to accelerate the project and get it built sooner. One example is the Milano project. They originally received 24 units. Now they're applying for another 24. Then they would ask for another 20 in the second year to complete the build-out of the project.

Mueller: This year, one thing we really ought to look at is projects that are actually building.

Rowe: This year, according to Council policy, if projects have three or more years of allocations and they aren't actively building, they are not going to be eligible for another 15 allocations.

Mueller: Just a note, Planning Commission awards allocations by initiative and those don't go to City Council.

Rowe: City Council considers whether or not to allow a one or two-year competition. And they would consider the scoring, if it is appealed. But it goes back to the Planning Commission, as they are the final authority under the RDCS to award the building allotment.

McKay: Where are we as far as holding the competition bi-annually now?

Rowe: That will be a recommendation that will be presented to you in the spring of 2012 when we have new numbers from the Department of Finance. Those numbers will then be used to calculate the total building allocations that will be available in 2012. The recommendation at that time will be to have a competition to award

## **PLANNING COMMISSION MEETING MINUTES**

**OCTOBER 11, 2011**

**PAGE 6**

allocations over two years. There is a competition this year and there will be one next year, with a recommendation that it would be for a two year allocation and then there would be no competition in 2013.

### **ANNOUNCEMENTS/ COMMISSIONER IDENTIFIED ISSUES**

Tanda: Can we get further briefing on the announcement that Santa Clara County is planning to build state soccer fields in the unincorporated area of the City of Morgan Hill, since it could have a significant impact on the City?

Rowe: It is in the unincorporated area, so it will be going to the Santa Clara County planning office, but we will be asking for updates on that.

Tanda: If in fact they're looking for a bigger site, shouldn't that space on Condit be reserved for an expansion of our regional facility. It seems like we have ample space in the southeast quadrant for something like this. That would be good for residents and businesses.

### **CITY COUNCIL REPORTS**

The General Plan amendment action for Condit-UCP was not approved by Council.

### **ADJOURNMENT**

Noting that there was no further business for the Planning Commission at this meeting, Chair Moniz adjourned the meeting at 8:31 p.m.

**MINUTES RECORDED AND TRANSCRIBED BY:**

---

**ELIZABETH BASSETT, Development Services Technician**